

## **Remarks**

All claims have been amended leaving claims 1-3 and 7-10 pending in the application. The previously pending claims have been rejected as either anticipated or obvious in view of the cited references. Applicant requests reconsideration of these rejections in view of the amendments to the claims and the remarks herein.

The Examiner should appreciate the need to reevaluate the combination of cited references in light of the amendments herein to the claims. Simply looking in such references or others for the changed or added limitations is not sufficient. Such reevaluation is required because the prior art must suggest to those of ordinary skill in the art, "that they should make the claimed composition or device, or carry out the claimed process." In re Vaeck, 947 F.2d 488, 20 USPQ 2d 1438, 1442 (Fed. Cir. 1991) (emphasis added). Further, the text of 35 U.S.C. § 103(a) requires that "the subject matter as a whole" must be obvious rather than select elements. Applicant asserts that, with the claim amendments, the subject matter of the claims is transformed such that if an obviousness existed before, then it does not exist now. The mere fact that the prior art can be modified does not make the modification obvious "unless the prior art suggested the desirability of the modification." In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). "When prima facie obviousness is established and evidence is submitted in rebuttal, the decision-maker must start over". An earlier decision should not "be considered as set in concrete, and applicant's

rebuttal evidence then be evaluated only on its knockdown ability." In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (C.C.P.A. 1976) (emphasis added).

Further, the pending claims are anticipated "only if each and every element as set forth in the claims are found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). With regard to obviousness, MPEP §2142, which recites that to establish a *prima facie* case of obviousness, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). The amended claims contain limitations that alone or in combination are not taught by the cited references.

For example, claim 1 has been amended to recite a main body that defines both a first cavity and a second cavity that extends from an upper lip of the main body in a first direction. Claim 1 goes on to recite a tubular handle extending from the main body in the first direction. The cited references do not teach these features and for at least this reason claim 1 is allowable.

Claims 2 and 3 depend from claim 1 and are allowable for at least the reasons given above regarding claim 1.


Claim 7 also recites a tubular handle extending in the same first direction as the cavities and for at least this reason claim 7 as well as claims 8-10 depending therefrom are allowable.

Claims 1-3 and 7-10 have been amended and are allowable for at least the reasons given above. Applicant requests allowance of the pending claims in the Examiner's next action.

Respectfully submitted,

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By: \_\_\_\_\_

  
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